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No. 90-879

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1990

RALPH RODNEY FIELDS,

Petitioner,

v.

JOSEPH T. DURHAM, et al.,

Respondents.

**Petition For A Writ Of Certiorari To The
Court Of Appeals For The Fourth Circuit**

BRIEF IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit, on remand from this Court, 110 S.Ct. 1313 (1990), is reported at 909 F.2d 94, and is reprinted in the supplemental appendix to the petition for certiorari.

The memorandum decision of the United States District Court for the District of Maryland (Motz, J.) has not been reported. It is reprinted in the appendix to the petition for certiorari.

STATEMENT OF THE CASE

Respondents, Joseph T. Durham, James S. Jeffers, and the Community College of Baltimore, submit this statement of the case to correct the inaccuracies and omissions in Petitioner's statement.

1. This case was commenced in the United States District Court by Petitioner, a dismissed Community College Dean, against several college and local officials whom Petitioner alleges discharged him without due process. The Court of Appeals originally upheld the District Court's summary judgment dismissal of the case on the basis of *Parratt v. Taylor*, 451 U.S. 527 (1981) and *Hudson v. Palmer*, 468 U.S. 517 (1984), reasoning that because the officials' alleged failure to follow state procedures in connection with Petitioner's termination was "random and unauthorized," due process was satisfied by the meaningful postdeprivation remedies available to Petitioner under state law. *Fields v. Durham*, 856 F.2d 655 (4th Cir. 1988) (Fields I).

On March 5, 1990, this Court granted certiorari in *Fields I*, vacated the judgment, and remanded the case for further consideration in light of its decision in *Zinerman v. Burch*, 110 S.Ct. 975 (1990).

On remand the Court of Appeals determined that supplemental briefing in light of *Zinerman* was appropriate, and directed the parties as follows, "In particular, the Court requests that the parties indicate the extent of predeprivation process provided in this case and whether it comported with the requirements of *Mathews v. Eldridge*, 424 U.S. 319 (1976), and other relevant Supreme Court cases." Order of the Court of Appeals, dated March 26, 1990. After reviewing supplemental briefs and appendixes filed by the parties, the Court of Appeals again affirmed the judgment of the District Court, *Fields v. Durham*, 909 F.2d 94 (4th Cir. 1990) (*Fields II*), concluding as a matter of law that Petitioner received sufficient process to satisfy the requirements of the Fourteenth Amendment. Petitioner's petition for rehearing and suggestion for rehearing in banc was denied by the Court of Appeals, and Petitioner now seeks review of *Fields II* by way of certiorari in this Court.

2. The facts underlying this litigation are as stated by the Court of Appeals. Supp. App. to Petition for Certiorari, 4, 5. Petitioner joined the faculty of the Community College of Baltimore in 1967, where he received faculty tenure three years later. Petitioner was appointed Dean and Provost of the College in 1978, a position to which he was reappointed in 1984.

On June 27, 1986, Respondent Joseph T. Durham, President of the Community College of Baltimore,

informed Petitioner that he was being dismissed as Dean and Provost of the College. Petitioner's dismissal came after he had been notified of deficiencies in his performance and after he had received an unsatisfactory evaluation. Petitioner was told of his right to appeal his dismissal to the President's Cabinet, but he did not take that appeal and instead sought direct review of the termination decision by the Board of Trustees. At the hearing before the Board, Petitioner was represented by counsel, produced witnesses on his behalf, presented numerous exhibits, and had the opportunity to testify and cross examine witnesses. After the hearing on August 12, 1986, the Board unanimously affirmed Petitioner's discharge.

3. Petitioner subsequently brought this 42 U.S.C. § 1983 suit against the College, its Trustees, President Durham, and the Mayor and City Council of Baltimore, alleging that his property interest in continuing employment had been denied without due process. He alleged that the process which he was provided failed to conform with that required by the College's rules and regulations and his employment agreements. He also alleged numerous pendent state law claims sounding in contract and tort. The District Court granted Respondents' motion for summary judgment on the § 1983 claim and declined jurisdiction over the pendent state law claims.

The Court of Appeals affirmed the District Court's judgment in *Fields v. Durham*, 856 F.2d 655 (4th Cir. 1988) (*Fields I*). After deciding that Petitioner's complaint alleged at most a random and unauthorized failure of college officials to follow state procedures in connection with his termination, the Court of Appeals held, relying on *Parratt v. Taylor* and *Hudson v. Palmer*, that due process

was satisfied by the meaningful postdeprivation remedies available under Maryland law. This Court granted certiorari in *Fields I*, vacated the decision, and remanded for consideration in light of *Zinerman v. Burch*.

In considering the case on remand, the Court of Appeals noted that *Zinerman* requires courts to consult the entire panoply of predeprivation and postdeprivation process provided by the state to determine whether a procedural due process violation has occurred. After recognizing that due process normally requires a hearing before the state deprives a person of liberty or property, the Court of Appeals considered the extent of predeprivation process provided to Petitioner, and held that it more than satisfied due process. The Court of Appeals also noted that Petitioner has available to him numerous post-deprivation remedies under state law to explore the full nature of his employment rights, including whether Respondents failed in any way to adhere to Petitioner's contract of employment. The Court of Appeals summarized its holding as follows, "In short, [petitioner] has received an abundance of process. The state established specific pretermination procedures, state officials provided [petitioner] with actual process before terminating him from his job, and the state provided numerous post-deprivation tort and contract remedies for illegal official action." Supp. App. to Petition for Certiorari, 21.

REASONS FOR DENYING THE PETITION

PETITIONER HAS FAILED TO DEMONSTRATE ANY SPECIAL OR IMPORTANT REASONS FOR THIS COURT TO GRANT DISCRETIONARY REVIEW

Petitioner presents three questions for review. None of the questions involve special or important issues which would justify issuance of a writ of certiorari. The decision of the Court of Appeals implicates none of the traditional grounds for certiorari jurisdiction: it does not conflict with decisions of other Courts of Appeals on the same subject; and it does not involve an important question of federal law which has not been, but should be, decided by the Supreme Court. Petitioner does not even assert that review by this Court would produce an opinion that will give guidance to the lower courts, or that there would be any national impact in letting the lower court decision stand. The petition for certiorari is nothing more than an unsuccessful attempt to show that the decision below was erroneous.

QUESTION A

The first question presented, as framed by Petitioner, is "Whether the Court of Appeals erred when it violated 28 U.S.C. § 1738 by failing to give preclusive effect to a prior state court judgment." As Petitioner's argument discloses, this question involves a mere assertion of error which turns on the peculiar facts of this case; and not even Petitioner pretends that a decision by this Court will effect anyone other than the parties to this case.

But Petitioner's assertion that the lower court violated 28 U.S.C. § 1738 by failing to give preclusive effect

to a state court judgment is disingenuous and misleading. At no time in this litigation prior to filing the petition for certiorari did Petitioner invoke 28 U.S.C. § 1738 or assert that a state court judgment between the parties had preclusive effect. This Court should deny review as to Question A since ordinarily it does not decide questions not raised or involved in the lower court. *Youakim v. Miller*, 425 U.S. 231 (1976); *United States v. Mendenhall*, 446 U.S. 544 (1980).

That Petitioner never raised below the issue presented in Question A is easily confirmed by reference to the decision of the Court of Appeals, which never once mentions the issue. The Court of Appeals hardly "overlooked the state court judgment," as asserted on page 11 of the petition for certiorari. This is further confirmed with reference to page i of Petitioner's brief in the Court of Appeals, App. 1, *infra*, wherein the sole argument presented was: "The pre-deprivation process provided to Fields in the taking of his constitutionally protected property interests as an administrator and tenured faculty member, was not constitutionally sufficient."

Furthermore, the record in this case does not contain pleadings and other materials from the state court litigation sufficient for this Court to answer Question A even if the Court was so inclined. Petitioner's bald assertion that a state court judgment between the parties must be given preclusive effect in the instant federal litigation cannot be reviewed because all that appears of record concerning the state court litigation is four pages of transcript of a hearing on a motion for summary judgment; a one page order granting summary judgment; and a two page order

denying a motion for judgment n.o.v./new trial. These state court materials, which are appended to the petition for certiorari, are clearly insufficient for this Court to decide whether the state court judgment has any preclusive effect.

Additionally, it is far from clear whether the state court judgment upon which Petitioner relies is a "final judgment" entitled to preclusive effect. The state court judgment is that of the Circuit Court for Baltimore City, a *nisi prius* court, and is currently pending on direct appeal before the Maryland Court of Special Appeals (the intermediate appellate court which decides appeals as of right from the circuit court). As a matter of Maryland law, the issue of the preclusive effect of a judgment of the circuit court on appeal is an open question. See, *Davis v. Frederick County*, 25 Md. App. 68, 73 n.4 (1975) ("While it is well settled that the rules of *res judicata* do not apply unless there is a final judgment on the merits, the effect of the pendency of an appeal on the applicability of that doctrine has never been decided in Maryland."). Thus, before this Court could decide Question A in Petitioner's favor, it would have to resolve an open question of Maryland law.

QUESTION B

The second question presented in the petition is whether the Court of Appeals erred in failing to stay its determination of this case in light of a state court action between the parties. Like the first question, the second question invokes none of the traditional grounds for certiorari jurisdiction in the Supreme Court. Petitioner's argument amplifying the reasons relied upon for

allowance of the writ as to Question B constitutes a mere assertion that the lower court "abused its discretion when it failed to grant [Petitioner's] motion to stay," (Petition for Certiorari, 42) without any assertion that resolution of the question would be of importance to anyone other than the parties to this case.

For the reasons set forth in the Memorandum of Law in Opposition to Motion to Stay which Respondents filed in the Court of Appeals, a copy of which is appended hereto (App. 2-7, *infra*), the lower court did not abuse its discretion in denying Petitioner's motion to stay. Respondents incorporate by reference but will not repeat those reasons here, except to point out that the motion to stay, like the petition for certiorari itself, was filed by Petitioner in an attempt to forestall reversal of the state court judgment which was erroneously entered in his favor, and which is now pending for review before the Maryland Court of Special Appeals.

Petitioner cited no legal authority in support of the motion to stay which he filed in the Court of Appeals, and, contrary to the assertion on page 10 of the petition, he did not renew the motion when he filed his brief in the Court of Appeals.¹ The Court of Appeals did not discuss

¹ Petitioner's assertion that "in the supplemental brief [Petitioner] incorporated the motion to stay and argued that the 'operant facts' relevant to the federal appeal had already been determined in the state court," (Petition for Certiorari, 10) is untrue. The only reference to the motion to stay which is contained in Petitioner's brief in the Court of Appeals states as follows: "Appellant has set forth in his motion to stay appeal during pendency of state court appeal, the facts concerning his

(Continued on following page)

the issue in its opinion. Therefore, the second question presented was not preserved for appellate review. *Youakim v. Miller*, 425 U.S. 231 (1976); *United States v. Mendenhall*, 446 U.S. 544 (1980).

QUESTION C

Like the first two questions presented by Petitioner, the third question involves merely an assertion of error, the resolution of which would impact upon only the parties to this case. Petitioner has lost sight of the fact that the Supreme Court does not sit merely to correct errors by lower courts, and that "[a] review on writ of certiorari is not a matter of right, but of judicial discretion . . . granted only when there are special and important reasons therefor." Rules of the Supreme Court, Rule 10.

Petitioner's Question C invites this Court to determine whether the Court of Appeals applied the proper standard in reviewing the District Court's grant of summary judgment in Respondents' favor. There is no contention in the petition that this case involves an examination of the contours or limits of *Zinerman v. Burch*, or that the Court of Appeals misapplied *Zinerman*.

(Continued from previous page)

filing suit in the state court. Appellant adopts all *facts* set forth in said motion to stay as though each were fully set forth in this supplemental brief." Petitioner's Brief in the Court of Appeals, 2, n. 1, App. 8, *infra*. In his brief to the Court of Appeals Petitioner thus incorporated the "facts" set forth in the motion to stay, but neither renewed the motion itself nor incorporated the grounds upon which the motion had been based.

Furthermore, Petitioner's assertion that the Court of Appeals erred is without merit. The facts, even viewed in the light most favorable to Petitioner, established that he was not denied due process. As noted by the Court of Appeals, Petitioner received an abundance of predeprivation process. On June 27, 1986, Petitioner received notice from the President of the College that his performance as Dean of Faculty and Provost contained "serious deficiencies," and had been rated "unsatisfactory." After being told of the reasons for his dismissal, Petitioner was able to appeal the decision both to the President's Cabinet and to the Board of Trustees. Petitioner did not take his appeal to the President's Cabinet, but instead appealed directly to the Board of Trustees, before whom, as noted previously, he received a hearing, was represented by counsel, produced witnesses on his behalf, presented numerous exhibits, and had the opportunity to testify and cross-examine witnesses. Additionally, the state provided Petitioner numerous postdeprivation remedies to explore whether the college officials failed to adhere to his employment agreement. Such abundant process clearly satisfies the Fourteenth Amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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December, 1990

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App. 1

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App. 2

[Respondents' Memorandum of Law in Opposition to
Motion to Stay, filed in the Court of Appeals]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 88-1564

RALPH RODNEY FIELDS,
Plaintiff-Appellant

v.

JOSEPH T. DURHAM, Individually and as
President of Community College of
Baltimore; COMMUNITY COLLEGE OF
BALTIMORE; MAYOR AND CITY COUNCIL OF
BALTIMORE CITY; JAMES S. JEFFERS,
Chairman of the Board of Trustees
Community College of Baltimore;
THE BOARD OF TRUSTEES COMMUNITY
COLLEGE OF BALTIMORE,

Defendants-Appellees

MEMORANDUM OF LAW IN OPPOSITION
TO MOTION TO STAY

Appellees, by their attorney, Burton H. Levin, Assistant Solicitor, file this Memorandum of Law in Opposition to the Motion to Stay filed by Appellant (hereinafter "Fields"), and state as follows.

Fields' Motion to Stay is filed to gain a tactical advantage in the state court proceeding to which he makes cryptic reference, and should be denied. Fields cites no legal authority in support of his motion, and research by Appellees' counsel disclosed no precedent for the relief requested. This court should exercise its jurisdiction to resolve the substantial federal issues involved in this case. Absent significant countervailing reasons, the

federal courts are obliged to exercise their jurisdiction. *Colorado River Waste Conservation District v. United States*, 424 U.S. 800 (1976). Fields has not shown any significant interest in support of his motion. Even the passing reference which Fields makes to the state court action discloses that there are no federal claims involved therein. Fields is asking this court to stay its judgment on important issues of federal law between the parties while he litigates separate state law issues in state court. There is simply no authority or basis for such a request. Furthermore, Appellees assert that they never deprived Fields of his constitutional right to procedural due process, and that such will be the decision of this court after considering the briefs and arguments of the parties. Appellees desire to have their day in court, and to have the constitutionality of their conduct vindicated.

As a basis for his motion to stay Fields merely recites that "he will not seek a new trial on the merits in the federal court if his state court verdicts are upheld at the conclusion of the state appeal process." (Motion to Stay Federal Appeal Process During the Pendency of State Court Appeal, paragraph 6). Such recitation provides no basis for this court to grant the requested stay. First, the state court appeal process may result in a remand for a new trial [sic]. If that occurs, it could take years before the state appeal process is concluded, and, pursuant to Fields' request, years before this court decides this case. Second, Fields offers no assurance how he will proceed if some but not all of the state court verdicts are upheld on appeal.

Because Fields has gone outside of the record on appeal, and made passing reference to the state court

action between the parties, Appellees believe it their obligation to provide the court with essential information concerning the state court action. On September 13, 1988 this court decided that Fields' constitutional rights were not deprived by Appellees' alleged unconstitutional actions since he had adequate postdeprivation remedies under state law. *Fields v. Durham*, 856 F.2d 655 (4th Cir. 1988). Specifically, this court stated what state court remedies Fields could pursue (those being the pendent state claims he asserted in his federal complaint): breach of contract, wrongful discharge, civil conspiracy and tortious interference with contract. 856 F.2d at 659.

On December 12, 1988 Fields filed a petition for writ of certiorari in the United States Supreme Court. That petition was still pending when, on January 13, 1989, Fields filed suit against the appellees in state court. The factual allegations in the state court complaint are identical to those in the instant federal action. Instead of confining himself to tort and contract claims in the state court action however, as both Judge Motz and this court assumed he would, Fields joined a count alleging that his rights to procedural due process, *as guaranteed by the Maryland Constitution*, were violated. The procedural due process violation count in the state court action is identical to that in the instant case, except in the former the state constitution is relied on while in the latter the federal constitution is.

Despite Appellees' opposition, which among other arguments was based on the res judicata effect of this court's decision, the state court judge presiding granted summary judgment in *Fields'* favor, finding that his termination from employment at the Community College of

Baltimore violated his state constitutional right to procedural due process, and breached his contract.¹ An inquisition on damages resulted in a verdict in Fields's favor of \$100,000.00 compensatory damages for breach of contract, \$400,000.00 compensatory damages for violation of his state due process rights, and \$1,250,000.00 in punitive damages for violation of his state due process rights.²

Appellees have appealed the state court judgment in Fields' favor to the Maryland Court of Special Appeals. The record has not yet been transferred from the clerk of the Circuit Court for Baltimore City to the clerk of the Court of Special Appeals, and therefore no briefing schedule has been established in that court. In the Court of Special Appeals Appellees will continue to maintain, *inter alia*, that *res judicata* barred the due process count of the state court action inasmuch as Appellees obtained a federal judgment in their favor on the same cause of

¹ Initially Fields' motion for summary judgment was denied. However, on a motion for reconsideration heard days before the trial was to start, another circuit court judge departed from the earlier ruling and granted summary judgment. Appellees are confident that the Maryland Court of Special Appeals will reverse, since the basis for summary judgment was the trial judge's erroneous belief that a violation of the College's by-laws in and of itself established a violation of Fields' right to procedural due process. See, *Kilcoyne v. Morgan*, 664 F.2d 940 (4th Cir. 1981).

² The relevant history of the state court action is recited in the memorandum of law in support of motion for judgment n.o.v. or, in the alternative, for a new trial, which Appellees filed in the state court action, a copy of which is attached hereto for the court's reference.

action Fields subsequently brought in state court. See, *MPC, Inc. v. Kenney*, 279 Md. 29, 33 (1977) (The standard for determining whether two causes of action are the same for purposes of invoking res judicata is whether the same evidentiary facts would sustain both actions). See also *Hunt v. Liberty Lobby, Inc.*, 707 F.2d 1493 (D.C. Cir. 1983) (Under well established law, the pendency of an appeal does not diminish the res judicata effect of a judgment rendered by a federal court).

It is clear that Fields is wary of a decision of this court in favor of Appellees, because of the consequences it will have when the Maryland Court of Special Appeals considers the case before it. It is also clear that the instant motion to stay is an attempt by Fields to forestall a ruling by this court which is adverse to him.

On March 5, 1990, the Supreme Court granted Fields' petition for certiorari and summarily vacated this court's judgment, and this court has ordered rebriefing. In particular, this court has directed the parties to brief the issue of the extent of predeprivation process received by Fields, and whether it satisfied due process. As argued in their brief, appellees provided Fields all the process he was due before his termination. If that determination is made by this court, and the judgment of the district court is again affirmed, it will be clear to the Maryland Court of Special Appeals that appellees violated no constitutional right of Fields. See *Bureau of Mines v. Georgia's Creek Coal and Land Company*, 272 Md. 143 (1974) (The due process provisions of the United States and Maryland Constitutions protect the same interests); *McIver v. Russell*, 264 F.Supp. 22 (D. Md. 1967) (accord).

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With that background concerning the state court action, it is obvious that Fields' motion to stay is not based on his desire to "benefit the court's docket," but to avoid the consequences of a decision against him by this court. Appellees respectfully request that Fields' Motion to Stay be denied.

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[Page 2 of Petitioner's Supplemental Brief in
the Court of Appeals]

* * *

Should this Court decide to treat this appeal as a review of a Motion for Summary Judgment, beyond the scope of the initial review of Judge Motz, then the most relevant and pertinent evidence that this Court could review would be the testimony of witnesses and evidence before the State Court action which proceeded to trial in January of 1990.¹ . . .

¹ Appellant has set forth in his Motion to Stay Appeal During Pendency of State Court Appeal, the facts concerning his filing suit in the State Court. Appellant adopts all facts set forth in said Motion to Stay as though each were fully set forth in this Supplemental Brief.

